M'CREA DISCOURAGED

The Pennsylvania Vice President Talks in a Pessimistic Strain.

He Thinks Railroads Will Not Recover from the Present Depression for Some Time-The Union Railway.

The Pennsylvania officials who were in the city yesterday returned to Pittsburg last night. James McCrea, vice president of the Pennsylvania Company, said there was but little that is encouraging in the business situation. There was a little more grain moving on a low rate stimulant, and the Pennsylvania lines were handling a little more coal and coke, as stocks had been allowed to get so low that they must be replenished, but there was by no means an ordinary or healthy volume of traffic moving. He thinks it will be some time before the railroads recover from the present depression. When questioned as to whether he thought further reductions would be necessary he said he feared they would. In answer to the remark that he took a dismal view of the situation Mr. McCrea said if any man would make a trip from the Ohio river to Johnstown, Pa., and see the idle manufactories, the idle coal mines and coke ovens and not have the blues he was made of different business ideas than he

He stated that for two weeks he had been attending meetings, and at most of them how to practice further economies without detriment to the railway service was the problem under consideration. He came here to talk over matters with the Union railway and Belt road officials and to attend a meeting of the executive committee of the Vandalia company. The fact is, there has been some friction between the new superintendent of the Union Railway Company and the Belt road and the other offi-cials, who thought Mr. Zion was exceeding his authority in interfering in their departments, and some very spicy letters were addressed to Mr. McCrea, president of the Union Railway Company. After talking with the officials and expressing the hope that there would be no more clashing of authority in the future, Mr. McCrea in-formed Superintendent Zion that his au-thority did not extend to the auditor's, the secretary's or treasurer's department, or over the general ticket agent. Mr. McCrea recommended certain further reductions in expenses of the companies.

Changes in Freight Rates.

At the Western Freight Association meeting at Chicago, yesterday, rates on furniture from Duluth, Superior and West Superior to Texas points were placed on the basis of 10 cents per 100 pounds above the Chicago rate. A minimum weight of 24,000 pounds was adopted for carload lots of timothy seed, except where Class A rates are used. A rate of 18 cents from St. Louis to southwestern Missouri river points on ootton-seed oil was adopted. Some more reductions in passenger rates were anbounced to-day by the Santa Fe, but they were made merely for the purpose of equalizing the rates throughout the different gateways. For instance, the rate from Chicago to El Paso was reduced from \$31.50 to \$28.35; Chicago to Houston, from \$31.95 to \$31.50; Chicago to San Antonio, \$32.20 to \$31.50. The Missouri, Kansas & Texas also announced some reductions, with the idea of making rates from its northern terminals to points in Texas \$1 below the California rate. From Junction City and Kansas City to Houston the rate was made \$19. From Hannibal to the same point it was made 24.95; from Higbee, \$22.55; from Moberly, 22.85; from St. Louis to San Antonio the rate was made \$26.50.

To-Day's Meeting at Chicago. It is thought that the meeting of the general managers of the Eastern lines at Chicago to-day will be an interesting one. Association officials have for some time past been quietly investigating certain matters, and their reports will be laid before the meeting. Positive proof of rate cutting, commission paying and other serious irregularities will be presented. The proofs adduced will, it is said, be so convincing that It will be useless for the officials of the guilty lines to attempt to enter denials These reports will be comprehensive, and will include investigations made at Chicago, Buffalo, Cleveland and other important competing points. The general managers will be asked to take vigorous action. The result, of course, is difficult to predict. It may end in the disruption of the association.

Personal, Local and General Notes. Cincinnati ticket brokers have raised their boycott on the Pennsylvania lines. The Monon is doing a large south-bound grain traffic and transporting large quanti-

Ford Wood, general freight agent of the Peoria & Eastern, is on an Eastern trip, and was yesterday in Buffalo.

ties of ice southward.

General Western Passenger Agent Hitchcock, of the Delaware, Lackawanna & Western, was in the city yesterday. George T. Gunnip, of the Santa Fe, and Townsend, of the Baltimore & Ohio passenger department, are in the city on official

Commencing with Sunday next, semaphore train orders will be put in service on the Vandalia main line between Indianapolis and St. Louis. Sunday, March 4, was the forty-third an-

niversary of the opening of the Terre Haute & Indianapolis, from which has grown the extensive Vandalia system. A telegram from Terre Haute, last evening, stated that William R. McKeen, presi-

dent of the Vandalia, was much better, and was thought to be out of danger. After April 1 the train dispatchers on the western division of the Baltimore & Ohio Southwestern will have their headquarters at Washington, Ind., instead of Seymour. The officials and receivers of the Santa Fe system are this week in conference in Bos-The freight as well as the passenger officials were summoned to the conference.

The Lake Erle & Western earned in February \$236,372, a decrease as compared with February, 1893, of \$53,704. Thus far this year it has dropped behind in earnings

G. W. Gracy, many years a dispatcher on

the Panhanole lines, will graduate from

the Ohio Medical University, Columbus, on

March 13, a full-fledged physician and sur-

H. C. Townsend, general passenger agent of the Missouri Pacific, who has been at Hot Springs for some weeks, returned on Wednesday. His health has not been good for some time.

The latest rumor is that A. A. McLeod, on leaving the New York & New England, will become president of the Lehigh Valley, succeeding President Wilbur, who is anxious to retire.

A number of railway officials passed through the city last night en route to Chicago to attend the meeting of general managers and superintendents, to be held in that city to-day.

The Veteran Association of the Pennsylyania lines will hold their annual reunion the last Thursday of next month at Pittsburg. There are usually about two hundred in attendance.

H. H. Porter, chairman of the executive committee of the Chicago & Eastern Illinois, will pass through here this morning over the Big Four, en route to Florida with a party of friends. The annual meeting of the Peoria & Pekin Union will be held on Tuesday next. It is stated that C. E. Schaff will be elected president of the company, succeeding

Joseph Ramsey, jr. The Brotherhood of Locomotive Engineers will hold its biennial convention at St. Paul May 16. The old question of electing another man than P. M. Arthur for grand chief will come up.

D. B. Martin, general passenger agent of the Big Four, was in St. Louis yesterday. Report has it again that in the near future his headquarters will be changed from Cin-

cinnati to St. Louis. Major Mauk, a well-known passenger conductor on the Pittsburg, Fort Wayne & Chicago, is so ill again as to be obliged to remain at home. He had but just recovered from a three months' illness.

Passenger men connected with the St. Louis & San Francisco state that there never was a time when travel to southern Kansas and Oklahoma was as heavy as it has been for the last thirty days.

Emigrant business westbound is improving. For ten days past the Panhandle lines have been taking West an average of one hundred emigrants a day, turned over to them at Pittsburg by the Pennsylvania. J. B. Barnes, superintendent of motive power of the Wabash lines, has gone to Hot Springs to remain a month. He is still experlencing a good deal of trouble with the limb which was broken twice by accident

in the last year. The general manager of the Chicago Great Western gave notice of a 10 per cent. reduction in wages of trainmen, dating from March 1, in the same circular saying if there is to be any arbitration it must fol-

low the reduction. The Pennsylvania Company sent experts to New Albany to examine a smoke con-sumer, the invention of Harry Delaney, says that Davis came to he master mechanic of the Monon. and were guest and not as a boarder.

greatly pleased with the tests made and will recommend its adoption by the Penn-An order has just been issued reducing 10 per cent. the wages of all employes of the Buffalo, Rochester & Pittsburg road who receive over \$40 per month. The reduction will affect almost five hundred men, and those employed by the coal companies and railroad

together number over 4,000. The committee of the roads north of the Ohio river on relations with Southern roads were in session here yesterday, talking over the division of percentages, but the affairs of the roads south of the river are so demoralized that but little of importance was done, and nothing that will af-

B. F. Wilson, for many years with the Chicago & Alton, has been appointed general agent of the Kansas City, Pittsburg & Gulf, with headquarters at Joplin, Mo. The Chicago & Northwestern has established an office at St. Louis and appointed George F. Brigham general agent for

There were present at the meeting of the executive committee of the Vandalia James McCrea, vice president of the Pennsylvania Company; John E. Davidson, treasurer; John G. Williams, vice president and general manager of the Vandalia, and George E. Farrington, secretary of the Vandalia. The business was wholly in relation to the finances of the Vandalia, without interest to outsiders.

The seventh international convention of the railroad department of the Young Men's Christian Association will be held in New York city, commencing March 29. There are now ninety-five local associations of this character in this country, with a membership of 23,000-railroad employes. The most prosperous local association in this State is at Fort Wayne. It has become self-supporting.

After what seemed an interminable litt-gation the suit of J. Kennedy Tod & Co. against the Kentucky Union railroad has run its course, and the railroad will be sold at public auction at the Lexington courthouse next Monday morning. The Kentucky Union railroad is about one nundred miles long and the road is to be sold without redemption. The upset price is fixed at \$1,000,000.

The sult, involving \$4,000, to foreclose a mortgage on the Pittsburg, Akron & Western railroad will be withdrawn. This is the outcome of an agreement between the receiver, W. A. Lynch, and the bondholders. by which receiver's certificates will be issued to pay off floating indebtedness due from construction work and for the improvement of the line. The certificates run two years, and during that time the receiver will

operate the road. In regard to the statement of the friends of D. J. Mackey to the effect that the Evansville & Richmond would have been built on to Richmond and eventually to Toledo had not the Pennsylvania Company taken steps to prevent the Mackey syndicate placing their bonds Mr. McCrea said it was the most absurd statement he had read in many years. He knew that the Pennsylvania Company had never, by word or ac done anything to defeat that scheme of Mr.

Employes in the Big Four shops at Wabash have been notified that there will be a reduction in working hours to forty-two hours per week. According to the bulletin issued the men will work eight hours the first four days each week, six hours the fifth day and four hours the sixth day. As the men are paid by the hour this is equivalent to a cut in wages. There was a reduction in pay a month ago, and though the men do not fancy the second cut, there will be no trouble, as the management says it will be only temporary.

PERSONAL AND SOCIETY.

Miss Zerelda Beaty returned yesterday from a trip to Florida. Mrs. Chapman Williams will not hold her

usual reception this afternoon. A party of ten will come from DePauw to attend the opera Monday evening. Mrs. William Daggett has returned from Detroit, where she has been visiting her

Mr. and Mrs. William L. Elder will leave to-day for Hot Springs, Ark., to spend a few weeks. Mr. William S. Hubbard, who has been in California for the past three months, has returned home.

Mrs. Paul, of Chicago, is the guest of Mrs. Cortlandt Van Camp and family, on North Delaware street. Miss Dora Martin, of Cleveland, and Miss

Alice Vernon, of Toledo, are visiting Mrs. Bradley and daughter for a few days. Mr. and Mrs. Joseph K. Sharpe, jr., gave another of their series of small dinners last evening at their home on North Delaware Mr. and Mrs. William Granger, of Chi-

cago, who have been the guests of friends here for a week, left yesterday for Asheville, N. C. Mrs. Bond, of West Vermont street, observed the anniversary of her birthday last evening by entertaining a number of friends

informally Miss Minnie Darby, of Chicago, formerly of this city, is visiting Mr. and Mrs. Frank Hamilton, on Park avenue, and other friends here.

Miss Knubbe will have some of her fine crayon work and china painting on exhibition at the Industrial Union this afternoon after 2 o'clock. Miss Margaret Roberts is home from the

State University, accompanied by Miss Charlotte Malott and Miss Addie Perry, to attend the contest to-night. The Over-the-Tea-Cups Club will meet this afternoon with Mrs. D. L. Wood on North

Pennsylvania street instead of with Mrs. Jones, as previously announced. Miss Margaret Guffin, of Rushville, is visting Mrs. Finley Pugh and family on North Delaware street. Wednesday evening Mrs. Pugh entertained a few friends informally

in honor of Miss Guffin. The Woman's Foreign Missionary Society of Roberts Park Church will meet this afternoon at 2:30 o'clock at the residence of Mrs. Edward B. Porter, No. 124 East Michigan street. It is a thank-offering day. A PRETTY HIGH TEA.

Mrs. Henry Fraser gave a high tea yesterday at 4 o'clock in honor of Miss Louise Garrard. The guests were seated at the round table in the handsome colonial dining room and the adornment was entirely in pink. The light was from pink candles, and pink carnations added their fragrance and color from tall stem glasses. The other members of the circle were Mrs. Augustus Lynch Mason, Mrs. William Mode Taylor, Miss Georgia Maxwell, Miss Emma Martindale, Miss Newcomer, Miss Anna Hasselman and Miss Zerelda Beaty.

ROGERS-BRYAN. Special to the Indianapolis Journal. SHELBYVILLE, Ind., March 8 .- The marriage of Harry M. Rogers, a prominent merchant of Morristown, and Miss Marie Bryan, of this city, was one of the important social events of the season. The young couple left immediately after the ceremony for Morristown, their future

BIERSTADT-STEWART. NEW YORK, March 8 .- Albert Bierstadt, the famous American landscape painter, was married yesterday afternoon to Mrs. Mary E. Stewart, widow of David Stewart and daughter of the late Edward Hicks, of Brooklyn, at the residence of the bride, No. 322 Fifth avenue, by the Rev. Dr. J. W. Brown, rector of St. Thomas Church,

CITY NEWS NOTES.

The Republican county convention may be held in one of the theaters instead of Tomlinson Hall. H. C. Hendrickson will be a candidate for school commissioner in the Tenth district,

now represented by Mr. Conner. The election will occur in June. The Indiana chapters and alumni of the Beta Theta Pi fraternity will have their annual banquet at the Commercial Club room this evening at 10:30 p. m. Last week Ed Crosby and Jacob Barbour, colored, became involved in a fight at Jackson's saloon, at the corner of Sixth

street and Michigan road. Last night they

were arrested.

Rev. Joseph Earp, father of Dr. S. E Earp, of this city, died suddenly at his home in Lebanon, Ill., yesterday. He was born in 1819, and had been a Methodist minister for fifty-five years. There was some excitement created in the basement of the courthouse yesterday morning by the mysterious discharge of a re-

volver. The report was heard, but no one could tell who fired the shot. Among the arrivals in town yesterday were Leopold Levy, of Huntington, who wants to be the Republican candidate for Treasurer of State, and ex-Representative George B. McIntyre, of New Albany. John McDads, colored, walked into Buschman's grocery on Fort Wayne avenue, yes-

man Kerins saw the fleeing man, pursued and captured him. Noah Robbins, a youth, was given 25 cents yesterday morning by Mrs. Pate, who resides at No. 190 South Illinois street, to buy some groceries. Robbins never reported with the groceries, and yesterday

terday, and seized a sack of flour, after

which he fled down the rear alley. Patrol-

evening was arrested by patrolman Fickei. He Was a Guest.

Mrs. George Raper says that Benjamin F. Davis, the man with a penchant for making wills, did not make a will in her favor. She says that Davis came to her house as a

ORDINANCE

Big Four Wins a Temporary Victory in the Sidewalk Case.

Violations Must Be Prosecuted Under the State Law, Says Judge Brown-Conflict with a Statute.

In an opinion yesterday in the Big Four sidewalk litigation Judge Brown, of the Circuit Court, gave the railroad company a temporary victory. The case involved the possession of a strip of sidewalk on South Delaware street running parallel and at the side of the Big Four freight offices. The city brought suit against John Higgins, a drayman, for driving over the walk. The case was appealed from the Police Court by the railroad company and went into the Circuit Court as a test case. In his decision Judge Brown virtually holds that the city ordinance providing for this class of offense is invalid. The point raised by Judge Elliott for the defense to the effect that that ordinance was adopted in violation of law and is wholly inoperative and void because there is already a State law covering the offense was sustained by the court, which said in

"It is the law of Indiana that when an act is punishable by a State statute it must be prosecuted by the State. That law would prevent a city from prosecuting an offense which originated under a State statute. It is claimed by the defense that the prosecution can only be brought by the State because the offense is punishable by one of the State statutes. The law in question is an amendment to an act passed in 1859 entitled 'an act for the protection of sidewalks in towns and villages and the preservation of shade trees planted along the same.' That is conceded by counsel for the defense to apply only to towns and vil-lages. In 1867 the Legislature passed an amendatory act of the act of 1859, the title of which is as follows: 'An act to amend the first section of an act for the protection of sidewalks in towns and villages and the preservation of shade trees planted along the same.' (Affirmed March 3, 1859, so as to protect sidewalks outside of towns and villages.) And the act as amended reads: 'That it shall be unlawful for any person to ride or drive * * * unless in the necessary act of crossing the same." "It is claimed by the defendant that the

words 'or upon any similar sidewalk for the use of foot passengers by the side of any public highway in the State unless in the necessary act of crossing the same' brings all the cities, as well as the towns and villages, under the purview of the statute; that any one who drives across the sidewalk of a city is punishable by the State statutes. The words 'public highway' are used in this statute. It is contended by the defense that a street is a highway, and the authorities seem to sustain that contention. It seems to me that the only question is 'is the statute broad enough to include the city of Indianapolis?" It says 'by the side of any public highway in the State' and the title reads, 'to protect sidewalks outside of towns and villages.' It is contended by counsel for the prosecution that it was certainly not the intention of the General Assembly to legislate in regard to cities, using as it did the word 'highway,' which is a term usually applied to rural roads. They contend that it was also delegated to cities the right to control their streets and the right to punish the obstructing of streets, and that the words 'outside of towns and villages' and the words of the statute 'in this State unless in the necessary act of crossing' has reference to ways outside of towns or villages in the country districts-rural ways. The only question for the court to determine is whether this statute is broad enough to include cities. It seems to me that it is. Indianapolis is in the State and comes within the purview of the law in my judgment. If that is so, this offense is punishable under the State statute. If it is punishable by State statute there cannot be a double punishment. In that view of the law the court sustains the objections to the introduction of the ordinance.

City Attorney Scott thought that the case had been so thoroughly covered by the ruling of the court that it would be useless to proceed with the trial. The jury was dismissed and the city took an exception to the ruling of the court.

ITS BUSINESS SHUT OFF. Muncie Wood and Pulp Company Has

a Federal Court Case. The injunction suit of the Muncie Wood Pulp Company against the Lake Erie & Western Railroad Company was yesterday transferred from the Delaware Circuit Court to the federal court upon application of defendant. The bill of complaint avers that the plaintiff corporation has over \$150,-000 invested in the business, receives over two hundred cars of material a month, and ships over sixty cars a month; that the defendant company has the only line of road to its works, and has constructed spurs and switches to facilitate the handling of freight; that it now refuses to move any freight for the plaintiff, except such as is consigned to it for shipment over its lines or is received over its lines. The railroad company served notice on the plaintiff that from and after Feb. 5 it would neither receive nor deliver freight or cars leaving or reaching Muncie over any line but its own. The complainant further states that t has one hundred cars of wood at Muncie that the Lake Erle refuses to bring out to the works, and that it has two thousand cords of wood on the banks of the Ohio river, near Cairo, which cannot be shipped until some assurance is given that it will be delivered. This wood, it is alleged, is in imminent danger of being swept away by high water, and yet there is no use bringing it to Muncie and paying from \$1 to \$2 a day demurrage on each car through inability to get it to the works, where it

can be unloaded The plaintiff also avers that the cars now standing unloaded at Muncie awaiting transportation to the works are costing it a large sum each day in demurrage. An order of court is asked enjoining the ratiroad company from refusing to receive or ship plaintiff's freight, and pending the hearing of the suit a temporary restraining order to the same effect is petitioned for.

NO WAITING ROOM THERE. Reason the Big Four Did Not Keep It Open.

The Supreme Court, yesterday, in an opinion by Judge McCabe, affirmed the decision of the Decatur Circuit Court in the case of the State against the Big Four railroad company for falling to keep its waiting room at Adams, a town in that county. open for one hour prior to the schedule time for the arrival of the noon train. The complaint was made by Isaac D. Waits, and is based on the statute containing such a provision, and which provides a penalty of from \$20 to \$300 fine. The lower court sustained the railroad company's motion to quash the affidavit on the ground that there is no waiting room at the station in question. The opinion does not involve the constitutionality of the law, and the Supreme Court declined to pass upon that question. contenting itself with simply affirming the lower court's decision, which is a victory for the Big Four.

May Attack the Ordinance.

The case of Howard Kitchen against the Indianapolis Gas Company to recover money alleged to have been overpaid was tried before Justice Walpole yesterday afternoon and taken under advisement. During the progress of the trial it developed that the company will attack the constitutionality of the gas ordinance in the higher courts in case of appeals. Kitchen had a heating stove, which he also used for cooking purposes. Upon receiving knowledge of this fact the company added 75 cents a month to the charges for the stove. Kitchen paid the additional charge voluntarily until a few days ago, when he brought suit to recover the amount thus paid. His attorney argued that it was the character of the stove and not the purpose for which it was used that regulated the charge. Mr. Winter took issue with him upon this point. He also said that the city had no more right to regulate the price to be charged for gas than it had to regulate the price to be asked for dry goods.

Corbaley Now Sues.

The Consumers' Natural-gas Company is the defendant in a suit for damages in the Superior Court. William H. Corbaley is endeavoring to recover damages for the destruction of a residence, which it is alleged was caused by a natural-gas explosion on Feb. 14, 1893. The tenant who occupied the property at the time of the explosion brought suit before Judge Bartholomew and recovered \$6,000. The owner of the demolished house now sues the company for the total loss of the property.

A New Trial Granted. Judge Harper yesterday granted the defendants in the case of Watson vs. The Indiana Veneering Company a new trial. Watson secured judgment for \$300, alleging dam-

ages to his person through the negligence of

the proprietors of the establishment. Judge Harper, in granting a new trial, said that the verdict of the jury was contrary to the

Criminal Court Arraignments. Following were the arraignments and pleas of prisoners in the Criminal Court yesterday morning: James Taylor, grand larceny, not

law and evidence in the case.

guilty; Mel McPherson, petit larceny, not guilty; Mary Smith, grand larceny, guilty; Adolph Patterson, petit larceny, not guilty; Noah Russell, petit larceny, not guilty. Mary Smith Pleads Guilty.

Mary Smith, colored, pleaded guilty to the

theft of \$35 from Maggie Twyman, No. 233

East Ohio street, yesterday. Judge Cox gave a one year term in the Woman's

THE COURT RECORD.

Supreme Court Opinions. 16544. Samuel C. Moore vs. Lulu P. Thomas. Howard C. C. Affirmed. Coffey, J.-Where a wife purchases an interest in lands and pays a consideration therefor, but by mistake the husband's name is inserted in the deed as grantee instead of the wife's, and she has no knowledge of the mistake, a judgment subsequently rendered against her husband is not a lien on such lands, and an action to quiet title thereto would lie on the part of a subsequent grantee. A judgment is only a lien upon the interest of the judgment debtor in land, and such lien is subject to all existing equities in favor of third parties. In the present case the judgment

never became a lien on the land conveyed

for the reason that the judgment defendant

never had an interest in it to which such

lien could attach. 16576. City of Delphi et al. vs. Nathaniel W. Bowen, Administrator. Carroll C. C. Reversed. Howard, C. J.—Sections 6416 and 3160, R. S., 1881, impose upon the clerk of a city as the city officer corresponding to the county auditor as county officer, the duty of assessing omitted property and giving notice to the owner required to be given in such case by the county auditor. Under Section 3160, R. S., 1881, the proper city officers have access to the books in the county auditor's office for the purpose of transcrib-ing therefrom a list of the property assessed. These three sections give the city clerk the power to make assessment of omitted property after the same has been placed upon and added to the tax duplicate of the county. The remaining questions are decided in the case of Reynolds, Auditor, et al. vs. Bowen, Administrator, decided at

16461. Schmidt et al. vs. Draper. Vigo C. C. Affirmed. Dailey, J.—A party cannot by encroaching upon an alley for more than twenty years gain any rights by such adverse possession to the property thus en-croached upon. The statute of limitations does not run as to the occupancy of part of a public street or alley of a city. Nor does such encroachment affect the rights of the abutting owners on the other side of

the alley to occupy the true line. 17233. State of Indiana vs. C., St. L. Ry. Co. Decatur C. C. Affirmed. McCabe, J.-1. Sections 5188 and 5189, R. S., 1894, acts 1891, p. 70, making it a penal offense for railroad companies operating lines through cities and towns of two hundred and fifty population or more not to provide and maintain suitable waiting rooms, etc., for the convenience of the traveling public, and for not keeping such rooms open for a period of not less than one hour next preceding the arrival of passenger trains, must be strictly construed, as they are highly penal in their nature. To constitute the offense of failure to keep open waiting rooms it is necessary to aver that the company had provided and maintained such waiting rooms, and an affidavit or information not making such averment may be quashed. 2. Constitutional questions will not be considered unless their consideration is absolutely essential to the final end of the case in which they are supposed to be involved. 16566. James M. Bell et al. vs. William P. Maish, Treasurer, et al. Clinton C. C. Appellants petition for reharing.

Appellate Court Opinions. 1089. Joseph Burchart vs. Henry Eel. Warrick C. C. Affirmed. Davis, C. J .- Where exceptions to instructions are reserved in the following language, "To the giving of instructions Nos. 1, 2 and 3 the defendant at the time excepted," the exception can be maintained only by showing that all of said instructions are erroneous. 2. Instructions not signed by the party asking them, or by his attorney, as required by the statute, may be refused without error. 3. To be ground of error in refusing instructions it must be shown that the instructions refused were not covered by other instructions given. 4. Where there is evidence to support a verdict, the verdict will not be disturbed on appeal. 1266. John Crawford, Trustee, vs. Joseph Hedrick et al. Warren C. C. Reversed. Gavin, J.-Judgment reversed on authority of Crawford vs. Hedrick, No. 1267 Ind.

App., 36 N. E. Rep. William Jarvis. Parke C. C. Reversed. Lotz, J.-1.-When the value of certain rails destroyed by a fire caught from a railway locomotive is in question it is error for a court to refuse to admit evidence as to their value from a party having knowledge of the country and timber growth and the value of rails in that locality. It is not neccessary that such party should have seen the particular rails the value of which was in question. 2. When the amount of recovery is a mere matter of calculation and the evidence furnishes the basis an appellate court may make the calculation and order a remititur; but if the evidence is uncertain or conflicting as to the basis of recovery, or if the recovery is of the character which is left largely to the discretion of the jury, a new trial will be ordered. 1208. Richard Hatfield vs. State of Indians. Ohio C. C. On motion of appellant

appeal dismissed. Superior Court. Room 1-James M. Winters, Judge. Gurley Taylor vs. Thomas Powers et al.; lamages. On trial by jury John Stann et al. vs. William Christople; account. Judgment for plaintiff for \$282.35.

Room 2-J. W. Harper, Judge Joseph Gardner vs. Horace R. Allen: mechanic's lien. Cause dismissed and costs Room 2-Pliny W. Bartholomew, Judge.

William Kraas vs. Charles Reichert et al.; mechanic's lien. On trial by court. Circuit Court. Edgar A. Brown, Judge.

Lace Back Suspender Company vs. William Pfafflin et al.; replevin. Jury returned verdict for plaintiff for return of goods. City of Indianapolis vs. John Higgins; violation of city ordinance. Trial by struck ury. Finding for defendant. Estate of Sarah Gregor vs., C. F. Gregor's Estate; claim. Trial by court. Allowed for \$2,253.87. Benjamin Gordon vs. Ricketts Hord's Estate: claim. Trial by court. Allowed for

After a Clubhouse.

The Republicans in the Second and adjoining wards will meet at the engine house, corner of Ash and Seventh streets, Saturday evening, March 10, to complete a permanent organization. At the last called meeting, held Feb. 24, it was the unanimous opinion of all present that a permanent headquarters or clubroom for Republicans in the northeastern part of the city should be secured at an early date. The lack of public halls or any rooms accessible for ward, precinct or committee meetings makes a clubroom almost a necessity in this stronghold of Republicans. The committee on permanent organization and enrollment of members will report at the Saturday evening meeting, and it is desired that all those interested in or wishing to encourage a movement of this kind will attend the above meeting.

He Banked in a Trunk.

Some time ago J. F. O'Brien, who owns a saloon at No. 514 East Washington street, was robbed of \$200. He kept his money in his trunk, and on the day of the robbery a man with whom O'Brien was slightly acquainted engaged him in conversation while another strolled leisuraly through the saloon, and, as was supposed, disappeared out the rear door. It afterwards became known that the second man had visited the apartments of O'Brien and stole \$200 which had been kept in a trunk for some time. The police are working on the case, but as yet have found no positive clews.

The only enterprise incorporated yesterday was the Indiana Loan and Security Company, of this city, which is organized for the purpose of conducting a general loaning business, with certificate holders upon real-estate security, the safe investment of an ultimate fund for maturing cerifficates secured by monthly payments, and for the indemnification of certificate holders at death. The capital stock is \$50,000 in \$50 shares, and the directors are Thomas C. Moore, Joseph T. Elliott, W. F. Stilz, Ovid D. Butler and E. J. Hodgson.

A New Security Company.

Life Is Misery

To many people who have the taint of scrofula in their blood. The agonies caused by the dreadful running sores and other manifestations of this disease are beyond description. There is no other remedy equal to Hood's Sarsaparilla for scrofula, salt rheum and every form of blood disease. It is reasonably sure to benefit all who give it a fair trial.

Hood's Pills cure all liver illa.

FEE AND SALARY LAW

Important Opinion by Judge Gillett, of the Lake Circuit Court.

He Holds that the Provisions of the Act Relating to County Recorders Are Unconstitutional.

Special to the Indianapolis Journal. CROWN POINT, Ind., March 8.-In the Lake Circuit Court, to-day, Judge Gillett rendered his opinion in the case of Thos. McCay against John F. Krost, recorder of Lake county. This action was brought for the purpose of testing the constitutionality of the fee-and-salary law passed by the General Assembly of 1891. Some time ago McCay presented a deed to the recorder to be recorded, and tendered a fee of \$1 in payment for such service. The recorder refused to record the deed for that fee, and suit was brought. The case was heard a few days ago, and to-day the court rendered the following opinion:

This action is brought by the plaintiff to compel the defendant to record a deed. The complaint shows that the plaintiff tendered to defendant the deed which he sought to have recorded, and also the amount of the fee provided for such service by the act of the General Assembly of 1891, fixing the fees and salaries of officers generally. The question as to the validity of this act, as applied to recordedrs, is the point in ques-

It is the claim of the defendant, among other things, that the act in question is invalid as to him because it fails to fix the compensation of the recorder of Shelby county, and that the act is therefore special in its character within the prohibition of the Constitution. In State ex rel. Stout vs. Henderson, the Supreme Court of this State has recently affirmed the validity of the act in question as applied to sheriffs and clerks, the court holding that since the act made provision for the salaries of the sheriff and clerk of Shelby county such act was not special as to them, and that as to them the law was constitutional because its provisions, so far as they related to sheriffs and clerks, might be severed from the principal act without doing violence to the legislative intent. In the course of the opinion, after commenting upon the fact that one of the evils sought to be remedied was the collection of constructive fees, a practice which existed, where it obtained at all, almost entirely in the offices of sheriffs and clerks, the court says: "In view of the evil to be cured and the manifest purpose of the General Assem bly, we think it not at an improbable that it would have passed this statute independent of its provisions relating to auditors treasurers and recorders. Having reached this conclusion, the rule that we will not decide a constitutional question when not necessary to a decision of the case upon its merits applies, and we will not, therefore, inquire as to whether the statute is or is not valid as to county auditors, treasurers

and recorders.

It is manifest, therefore, that the question presented in this case for the decision of the court is in no wise controlled by the decision of the Supreme Court that I have referred to. Section 22 of Article IV of the Constitution of this State, as originally adopted, contained this provision: "The General Assembly shall not pass any local or special laws in any of the following enumerated cases, that is to say: Regulating the election of county and township officers and their compensation. In relation to fees or salaries." In 1881 the Constitution was amended by adding to the provision I have last quoted the following words: "Except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required. The court knows judicially that the chief object which the framers of the Constitution of 1851 had was to make an end, so far as possible, of special and local legislation, This paramount purpose is evidenced by the debates of the convention and also by the fact that at the next session of the General Assembly, a session in which many of its members had been members of the convention, all of the prior legislation, with specified exceptions, was swept off the statute

was possible to obtain special legislation for the benefit of particular localities, and the mischief increased until each locality came practically a law unto itself, and the time of the General Assembly was largely engrossed with the consideration of private and special acts with which the State at large had no concern. The case of Maize vs. State, 4 Ind., 342, affords a practically contemporaneous view of the purpose of the Constitution of 1851 to limit the power of the Legislature to pass special laws. In that case the court says: "To remedy these evils-to restore the State from being a coterie of small independencies, with a body of local laws, like so many counties palatine, to what she

books. Under the Constitution of 1816 It

should be, and was intended to be, a unity, governed thoughout her borders on all sub jects of common interest, by the same laws, general and uniform in their operation-the restrictions in Sections 22 and 23 were embodied in the Constitution." SPECIAL LEGISLATION.

It is the contention of the Attorney-gen-

eral, who has at my request prepared a

brief in support of the constitutionality of the law in question, that the amendment to the Constitution of 1881, to which I have already called attention, restores to the Legislature the power to pass local laws upon the subject of fees and salaries. With this contention, however, I am compelled to disagree, because the Constitution still contains a special prohibition against local or special laws "in relation to fees and salaries," and the exception only permits anything like a want of uniformity in the enactment of such laws in cases where the Legislature undertakes "to grade the compensation of officers in proportion to the population and the necessary services required." This provision, in my judgment, contemplates that there shall be no departure from the practice of uniformity. except that a sliding scale of fees or salaries may be adopted which shall, in the legislative, judgment, be fairly proportioned to the population or amount of necessary services required, but if there was any doubt as to which of the two constructions should be placed upon the provision I have just mentioned, all discussion must, nevertheless, be said to be at rest because of the further provision, already mentioned, in the same section which prohibits the General Assembly from passing local or special laws "regulating the election of county and township officers and their compensation.' This provision in the original Constitution was left wholly unchanged by the amendment of 1881, and this court is not at liberty, in construing so solemn and important a document as the Constitution of the State, where every word, in legal contemplation, is supposed to be most carefully selected, and, as it were, hammered into place, to presume that the people, in adopting the amendment, intended to permit the Legislature to frame local or special laws in relation to fees or salaries, except in so far as they gave the express authority to enact general legislation, grading compensation of officers in the manner specially provided for by the latter clause of the section I have quoted from. In the consideration of the question in hand the mind is necessarily carried along a path which permits of no deviation to the single question, does the act of 1891, so far as it relates to recorders, amount to special legislation? That question once properly determined and there must be an end of strife and contention. If the act in relation to county recorders is not local or special legislation its validity must be affirmed; if, on the other hand, it in any degree impinges upon the constitutional aegis against local or special legislation, then whether the act in its general structure was wisely conceived or otherwise is no longer a question worthy of consideration, because its conflict with the Constitution renders it utterly void What are local or special laws? In Randolph vs. Wood, 49 N. J. L., 89, it is said that in order for a law to be general "it must embrace all and exclude none whose conditions and wants require such legisla-

tion, equally necessary or appropriate to them." So in ex parte Westerfield, 55 Cal., 550, it is said: "A general law must include all who come within its scope and purpose. It must be as broad as its object." But there is not a want of authority upon the particular question in hand. In speaking of a similar act the Supreme Court of Pennsylvania says: "It was not, then, a general act. It did apply to a great number of counties, but there is a dividing line between a local and a general statute. It must be either one or the other. If it apply to the whole State, it is general. If to a part, it is local. As a legal principle, it is as effectually local when it applies to sixty-five counties out of sixty-seven as it is applied to one county only. The exclusion of a single county from the operation of the act makes it local." (Montgomery vs. Commonwealth, 91 Pa. St., 125.) In David vs. Clark, 106 Pa. St., 384, the court say: "There is no dividing line between a general and a local statute. It

erality and uniformity to a statute is as fatal as the omission of many." So in Edmunds vs. Herbrandson, 50 N W. R. (N. Dak.), 970, the Supreme Court of North Dakota say: "It is no answer to the contention that an act is special legislation to insist that only a single class is excluded. The ex-

clusion of a single person or object which

must be one or the other. The omission of

one person or thing essential to give gen-

would be affected by a statute is fatal All must be included, or the law is not general. If one may be omitted, where shall the line be drawn? Here authority is in accord with principle. (Bray vs. Hudson, 50 N. J. L., 82; 11 Atl. Rep., 135; Bowyer vs. Camden, 50 N. J. L., 87; 11 Atl. Rep., 137; Manning vs. Klippel, 9 Ore., 367; Miller vs. Kister, 68 Cal., 142; 8 Pac. Rep., 813; Township of Lodi vs. State (N. J. Sup.), 18; Atl. Rep., 749)."

Rep., 749.)" To the same effect see Devine vs. Board of Commissioners, 91 Pa. St., 125; McCarty vs. Commonwealth, 110 Pa. St., 243. Another act applicable to one county was held local Commonwealth vs. Patton, 99 Pa. St., 258; State vs. Herman, 75 Mo., 340; Weinman vs. Wilkinsburg, etc., Ry. Co., 118 Pa. St., 192; Sutherland on Sta. Con., Sec. 127, supra, and Secs. 128, 129, id.

THE ACT IS UNCONSTITUTIONAL. Although, as before stated, the Supreme Court of this State, as such, has not passed upon the constitutionality of the act in question, yet Justice McCabe, of that court, in his dissenting opinion in the case of Henderson vs. State ex rel. Stout, supra, has given us the benefit and weight of his opinion upon that subject, and inasmuch as his opinion upon that subject is not to that extent in conflict with the opinion of the majority of the court, it must therefore receive due consideration. In the course of his opinion the learned justice

"As the local and special feature of the act is not in aid of a gradation of fees according to population and services required, the only case in which such special and local features is allowed, and outside of which it is forbidden, the act is clearly in conflict with the Constitution in that respect. I think the act is unconstitutional in another respect. It provides a schedule of fees to be taxed by all county officers in the State, and makes such fees, when taxed, the property of the county in which they are taxed. It provides a salary for every county officer in the State, except in Shelby county, where it provides no salary or compensation for the treasurer, auditor or recorder. As we have seen, that makes the act both local and special, and it is not done in aid of or as incident to a graduation of fees or salaries. There can be no doubt of the unconsti-

tutionality of the act in question, so far as it applies to recorders, in view of the authorities from which I have quoted. The act violates the constitutional provision that there shall be no special or local legislation upon the subject of fixing fees and salaries, not only by the omission to place the fees of the auditor, treasurer and recorder of Shelby county in the general scale of fees, and by reason of the further fact that the act leaves the people of that county, and indeed all people having business with those offiers in that county, to compensate them under the old system of fees, which, if the Legislature had enacted a valid law, it must be presumed that it intended to abolish. If this statute could operate as a law, as applied to recorders, the result would be that in ninety-one countles of the State the law would fix a maximum compensation to these officers, which would be received by them in the way of salarles, while in the ramaining county such officer would be entitled to all the fees of his office, although it might exceed double the amount that the same officer in another county having the same population as Shelby would receive. Even the strained reasoning that it should be presumed in support of the act that the Legislature found that the aggregate of the fees of the recorder of Shelby county under the act of 1879 was the equivalent of the amount which he would be entitled to under the scale of fees adopted in the act falls to the ground when it is considered that even if such was the case when the act was passed, yet the act was meant, and did apply, to the future, and in the nature of things there could be no assurance that the recorder of Shelby county would not in the year immediately following receive an aggregate amount of fees exceeding the compensation the Legislature intended to give him, but such a course of reasoning is in no event worthy of serious consideration because in practical effect three officers of Shelby county are at liberty to make all they can out of their offices under the old fee system, while like officers in other counties are put upon salaries. No heed can be given to the contention that the act should be supported because the Legislature intended to pass a law which was not local or special. No legal proposition could be fraught with more danger than the proposition involved in this contention that it is, within limits, within the power of the Legislature by the mere form of its enactment to evade the Constitution. It is true that a court would not presume in a given case that the Legislature acted from other than high and patriotic motives, but no court could for an instant yield to a proposition so subversive to constitutional government as that the Constitution might be set at naught because the form of an act was such as to lead to the inference that the Legislature intended to obey the Constitution, when, in point of fact, it was utterly violated by the act. In State vs. Judges, 21 Ohio St., 11, the court says: "The constitutionality of an act is to be determined by its operation and not by the form it may be made to assume. It is not argued, and, I take it, will not be contended that the act of 1893, fixing the salary of the recorder, auditor and treasurer of Shelby county, rendered the act of 1891 valid, because an unconstitutional act is a nullity, and an act which is void cannot be the subject of amendment. (State vs. Tufly, 20 Nev., 427; S. C. 19 Amer. St. Reports, 347) The enactment of a law putting an end to the old fee system, under which it was possible, in many instances, for officers to secure a competency within the short space of a few years, a system under which it was possible for an officer who had expended a large amount of money to secure his election "by fraud and covin," in the language of Coke, "to make his bargain good," would mark a long step towards better govern-

it with unfaltering hand. While a decision by the Supreme Court as to the constitutionality of the act in question can alone be looked to for an authoritative declaration of the law upon the subject, yet it is nevertheless the solemn duty of every judge, however humble, to administer his office in accordance with his opinion of what the law is, and it therefore becomes my duty to declare the act in question, so far as it relates to the fees and salaries of county recorders, unconstitutional and void. The finding will be or the de-The case will be immediately appealed to

ment. But courts in cases where their duty

is plain have nothing to do with expediency

or with popular opprobrium or acclaim, but

must declare the law boldly and administer

the Supreme Court.

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